

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

THE ESTATE OF SUSIE H. GREEN, ET AL., **PLAINTIFF,**
VS. **CIVIL ACTION NO. 4:04CV344-P-B**
MARINER HEALTH CARE, INC., ET AL., **DEFENDANT.**

ORDER OF REMAND

This matter comes before the court upon Plaintiff's Motion to Remand [18-1]. After due consideration of the defendant's notice of removal and the plaintiff's motion to remand – no response to the motion to remand having been filed – the court finds as follows, to-wit:

Pursuant to the Fifth Circuit's decision in *Gray v. Beverly Enterprises-Mississippi, Inc.*, 390 F.3d 400 (5th Cir. (Miss.) 2004), the motion to remand is well-taken and should be granted. Essentially, the Court in *Gray* held that contrary to the defendants' argument for removal in this case, "it is at least reasonable to expect that a Mississippi court might find that the allegations of the in-state defendants' malfeasance and nonfeasance are sufficient to state a claim under state law." *Id.* at 410. Thus, pursuant to *Travis v. Irby*, 326 F.3d 644, 647 (5th Cir. 2003), the plaintiff has demonstrated that there is a reasonable basis for predicting that she will recover against the Mississippi administrator-defendants in state court. Accordingly, the defendants cannot meet their burden in proving improper joinder to justify removal in this case.

IT IS THEREFORE ORDERED AND ADJUDGED that:

- (1) Plaintiff's Motion to Remand [18-1] is **GRANTED**; therefore,
- (2) This case is **REMANDED** to the Circuit Court of Leflore County, Mississippi from whence it came; and

(3) This case is **CLOSED**.

SO ORDERED this the 10th day of July, A.D., 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE